

1987

Freed Leasing, Inc. v. Debra K. Compton and Edwin Compton : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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DOCKET NO. 870216

IN THE SUPREME COURT

OF THE

STATE OF UTAH

FREED LEASING, INC.,)

Plaintiff/Respondent,)

-vs-)

Case No. 87-0216

DEBRA K. COMPTON and)
EDWIN COMPTON,)

Defendants/Appellants)

BRIEF OF APPELLANT

Appeal from a judgment of the Second District Court of
Davis County, State of Utah, the Honorable Rodney S. Page.

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FILED

SEP 21 1987

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OF THE
STATE OF UTAH

FREED LEASING, INC.,)	
)	
Plaintiff/Respondent,)	
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-vs-)	Case No. 87-0216
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FREED LEASING, INC.,)	
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EDWIN COMPTON,)	
)	Case No. 87-0216
Defendants/Appellants)	
)	

JURISDICTION AND NATURE OF THE PROCEEDINGS BELOW

Appellate jurisdiction of this Court is appropriate and conferred under Section 78-2-2 Utah Code Ann. as an appeal from a final judgment of the District Court for which original appellate jurisdiction is not conferred upon the Court of Appeals. This is an appeal from a final judgment of the Second District Court of Davis County, State of Utah, the Honorable Judge Rodney S. Page.

ISSUES PRESENTED BY APPEAL

Issue Number One: Is the judgment in favor of Debra Compton entitling her to recover exempt homestead sale proceeds

subject to setoff against a prior judgment against Debra Compton in favor of Plaintiff on an unsecured debt?

Issue Number Two: Are Defendants or either of them entitled to recover reasonable attorney's fees under Section 78-23-13 U.C.A. (permits a Court to award reasonable attorney's fees for a violation of Chapter 23, the Utah Exemptions Act) or is recovery available only under circumstances involving wrongful execution?

Issue Number Three: Are Defendants or either of them entitled to recover reasonable attorney's fees under Section 78-27-56 U.C.A. (permits the Court to award reasonable attorney's fees where an action or defense is without merit and not brought or asserted in good faith).

DETERMINATIVE UTAH STATUTES

A. Utah Exemptions Act, Section 78-23-3(5) U.C.A. provides as follows:

(5) When a homestead is conveyed by the owner of the property the conveyance shall not subject the property to any lien to which it would not be subject in the hands of the owner; and the proceeds of any sale, to the amount of the exemption existing at the time of sale, shall be exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.

B. Utah Exemptions Act, Section 78-23-13 U.C.A. provides as follows:

An individual or the spouse of a dependent of the individual is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this chapter. A court may award costs and reasonable attorney's fees to a party entitled to injunctive relief or damages.

C. Judicial Code Section 78-27-56 U.C.A. provides as follows:

In civil actions, where not otherwise provided by statute or agreement, the court may award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith.

NATURE OF THE CASE

Plaintiff Freed Leasing commenced this action in the Second District Court of Davis County seeking to set aside a quit claim deed conveyance by Debra Compton to her husband, Edwin Compton, of her one-half interest in the family home and further seeking to subject the home to Freed's judgment against Debra Compton obtained in an action filed in the Third District Court of Salt Lake County, State of Utah. Prior to the time this action was commenced by Freed Leasing, the Comptons had arranged for a sale of their family home and an escrow closing of the sale was already pending. At the time the title company was to complete the closing, it discovered the presence of Freed Leasing's notice of lien claiming that it had a judgment lien

against the interest of Debra Compton in the family home. Thereafter, following discussions between counsel for Freed Leasing and counsel for the Comptons, Freed Leasing insisted on receiving the entirety of the home's net sale proceeds as a condition to releasing its Notice of Lien. Debra Compton thereupon recorded a homestead declaration, and following its recordation instructed the title company to pay over the entire sale proceeds to Freed Leasing in order to close the sale of the family home. Shortly after paying over such proceeds, Comptons filed an answer and counterclaim against Freed Leasing seeking to recover back the monies paid to Freed Leasing from the closing and further seeking to recover reasonable attorney's fees incurred in the action.

DISPOSITION IN COURT BELOW

The matter was submitted to the trial court on stipulated facts with oral argument made by counsel for the parties. The Court concluded that Edwin Compton was the owner of a one-half interest in the home, was not at any time subject to the judgment or judgment lien in favor of Plaintiff, and was entitled to recover from Plaintiff one-half of the sale proceeds, together with interest at the implied rate, and judgment was granted in favor of Edwin Compton accordingly. The Court concluded that Debra Compton had been the owner of a one-half interest in the

home at all times up to the sale to the Joneses, that her prior purported transfer to her husband Edwin was a fraudulent conveyance and should be set aside and ignored, but that her one-half of the sale proceeds were exempted by the Homestead Declaration, and she was entitled to judgment against Plaintiff for the one-half of the homestead exempt proceeds, together with interest to the date of trial. However, the Court concluded that Debra Compton's judgment was subject to setoff against Plaintiff's prior judgment and she was not entitled to recover any proceeds back from Plaintiff. The trial court further concluded that Defendants were not entitled to recover an award of attorney's fees under Section 78-23-13 U.C.A. since such section only permits an award of attorney's fees for wrongful execution and were not entitled to recover attorney's fees under Section 78-27-56 U.C.A. since Plaintiff's action or the defense of the action by Plaintiff was not without merit.

STATEMENT OF FACTS

Appended hereto for the convenience of the Court is a certified copy of the Stipulation of Facts, together with the Exhibits that were originally appended thereto. The Davis County Clerk's office inadvertantly transmitted the record of this case to the Clerk of the Utah Supreme Court without page number references, making it impossible to refer to specific pages of

the record to support the statement of facts. In view of the circumstances and the fact that counsel for both Plaintiff and Defendants agreed to and submitted the Stipulation of Facts to the trial court, for the purposes of the following facts, reference is made to the appended Stipulation of Facts in support thereof. Based on the foregoing, the statement of facts is as follows:

1. Defendants Debra and Edwin Compton were husband and wife and the owners as joint tenants of a home situated in Davis County, State of Utah.

2. In April of 1984, in an action filed in Salt Lake County, Plaintiff Freed Leasing recovered for the balance owed on an auto lease by judgment against Defendant Debra Compton in the approximate amount of \$8900.00.

3. In June of 1984, Debra Compton transferred her interest in the home to her husband by signing and recording a quit claim deed.

4. After the recording of the quit claim deed, Edwin and Debra Compton and their minor child continued to reside in the home. The purported transfer by Debra to her husband Edwin constituted a "fraudulent conveyance" within the meaning of Title 25 of the Utah Code.

5. In July of 1984, Edwin Compton entered into an agreement to sell the home to individuals named "Jones" for the

price of \$122,000.00. The sale was negotiated in an arms length transaction and the sales price represented the fair market value of the home. The home was encumbered by first and second trust deed lien obligations with an aggregate balance in excess of \$120,000.00.

6. In contemplation of the closing of the sale of the home, the Comptons moved all of their personal property and household furnishings out of the home and permitted the Joneses to enter into possession.

7. On August 1, 1987, a closing took place between Edwin Compton and the Joneses at Associated Title Company and all documents were executed and the warranty deed was signed by Edwin Compton and deposited in escrow with the title company. The same day, when the title company attempted to record the documents with the Davis County Recorder, they discovered Plaintiff's "Notice of Lien" referencing this action against both Debra and Edwin Compton. The title company immediately advised the Comptons and Joneses that the notice of lien rendered the title to the home unmarketable and the sale could not be completed.

8. On August 3, 1984, counsel for Compton's informed Plaintiff's attorney that Edwin Compton would receive only \$1517.00 in total net sale proceeds from the home and that Defendant Debra Compton was entitled to and did claim a homestead exemption in the home of \$10,500.00. Plaintiff's attorney was

also given a copy of the proposed Homestead Declaration and the actual buyer's and seller's closing statements signed by the parties at the prior closing.

9. On August 6, 1984, counsel for the parties participated in a conversation with an officer of the title company for the purpose of authenticating the closing statements and verifying the amount of net sale proceeds to be received by the Comptons. During the conversation, the title officer advised Plaintiff's counsel that the net proceeds of \$1517.00 was based on an agreement by one of the mortgage holders to discount its payoff balance by approximately \$8000.00.

10. Counsel was also advised that if the closing was delayed further by reason of the notice of lien, the holder would no longer accept the discounted balance and the sale could not be completed, causing damage to Edwin Compton, as well as to the Joneses who were occupying the home and who had no notice or prior knowledge of any purported claim of Plaintiff to a lien on the home.

11. In the same discussion and in ensuing discussions, Plaintiff's counsel offered to hold the entire net sale proceeds of \$1517.00 in escrow to preserve and protect Plaintiff's claim until the Court could make a determination of the rights and interests of the parties. Plaintiff's counsel refused.

12. In an ensuing telephone conversation, Defendants' counsel tendered to Plaintiff one-half of the net sale proceeds (the amount that would have belonged to Defendant Debra Compton), but Plaintiff's counsel again refused, though he acknowledged that Edwin Compton was, at all times since the purchase of the home, at least a one-half owner of the home and was not obligated on Plaintiff's prior judgment.

13. Finally, on August 9, 1984, the title company received a letter from Plaintiff stating that upon receiving the entire net sale proceeds from the home of \$1517.00, Plaintiff would give the title company a release of lien and indemnify them respecting the lien. On the same day, Debra Compton recorded the declaration of homestead claiming a total exemption of \$10,500.00 in the home and instructed the title company to record the warranty deed to the Joneses and to release the sale proceeds to Plaintiff.

14. The warranty deed was recorded on August 10, 1984, following the recordation of the Declaration of Homestead and the \$1517.00 was paid by the title company to Plaintiff. Thereafter, on August 29, 1985, Defendants' answered Plaintiff's complaint and counterclaimed against Plaintiff seeking to recover back the entire sale proceeds, interest thereon and attorney's fees.

SUMMARY OF ARGUMENTSPOINT ONE

Section 78-23-3(5) U.C.A. (the "Utah Exemptions Act") specifically states with reference to a homestead exemption that the exempt interest and the proceeds from the sale thereof are exempt from levy, execution or other process for one year after the receipt of the proceeds by the person entitled to the exemption. Debra Compton, having been required to instruct the title company under protest to pay over the entirety of her exempt proceeds to Freed Leasing in order to facilitate and complete the closing of the sale of the home to a third party purchaser, and having been required to maintain the counterclaim in this action seeking to recover back such exempt proceeds, cannot be deemed to have had receipt of the exempt proceeds for the required minimum period of one year, and therefore such proceeds, upon recovery, are not subject to setoff for at least the one year period that Debra Compton is entitled to retain the proceeds by statute.

POINT TWO

Section 78-23-13 U.C.A. (the "Utah Exemptions Act") permits the Court to award costs and reasonable attorney's fees for an individual or a spouse or dependent of an individual entitled to injunctive relief or damages or both against a creditor to prevent or redress a violation of the chapter. Freed

Leasing violated Section 78-23-3(2) and (5) U.C.A. (which exempts the homestead interest from a judicial lien and from levy, execution or forced sale, and the exempt proceeds resulting from the sale for a period of one year) when Freed Leasing insisted on taking the entirety of the sale proceeds while knowing that the proceeds belonging to Debra Compton were totally exempt sale proceeds, and by refusing at all times to return such sale proceeds during the pendency of Debra Compton's action seeking to recover back such exempt sale proceeds.

POINT THREE

Section 78-27-56 U.C.A. permits the Court to award reasonable attorney's fees to the prevailing party where the action or defense to the action was without merit and not brought or asserted in good faith. In this case, Freed Leasing knew from the outset that there was no basis for its taking one-half of the home sale proceeds which belonged to Edwin Compton, since Edwin Compton was not at any time subject to Freed Leasing's prior judgment against Debra Compton. Nonetheless, Freed Leasing continued its refusal to return one-half of the sale proceeds to Edwin Compton until ordered to do so after the trial of this matter, and from the outset and during the entire pendency of this action, Plaintiff had no honest belief in the propriety of the activities in question, and attempted to take an unconscionable advantage of Edwin Compton respecting his rightful

claim to \$758.50 (one-half of the total sale proceeds). Under such circumstances an award of attorney's fees is appropriate.

POINT ONE: DEFENDANT DEBRA COMPTON'S JUDGMENT TO RECOVER EXEMPT HOMESTEAD SALE PROCEEDS IS NOT SUBJECT TO SETOFF.

The trial court properly concluded at the time of trial of this matter that Debra Compton having recorded a Declaration of Homestead prior to the recording of the warranty deed to the purchasers of her home , perfected her homestead exemption in the proceeds from such sale.

Section 78-23-3(5) provides as follows:

When a homestead is conveyed by an owner of the property the conveyance shall not subject the property to any lien to which it would not be subject in the hands of the owner; and the proceeds of any sale, to the amount of the exemption existing at the time of sale, shall be exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.
(Emphasis Added)

Debra Compton never received the exempt proceeds, which from the time of the sale even to this late date, remain in the hands of Plaintiff. Immediately after Plaintiff received Debra's exempt sale proceeds, Debra filed a counterclaim and asserted her right to recover such proceeds, which Plaintiff resisted and claimed was subject to setoff. Under these circumstances, the Court must determine when the one year

period of time begins to run and ends with respect to the exempt sale proceeds. This would be a more difficult question of interpretation if the statute merely said, "... for a period of one year from the time of sale,". However, the statute is much more clear; it states specifically that the proceeds are exempt for one year "after the receipt" by the person entitled to the homestead exemption.

A review of the definitions under 78-23-2 U.C.A. should resolve any doubts as to when the one year period should commence running and whether or not there could be any interruption in the one year period. Subsection (4) defines "judicial lien" as a lien on property obtained by judgment or other legal process instituted for the purpose of collecting an unsecured debt. Subsection (5) defines "levy" as the seizure of property pursuant to any legal process issued for the purpose of collecting an unsecured debt. Subsection (3) defines "exempt" to mean "protected" and "exemption" to mean "protection from subjection to a judicial process to collect an unsecured debt." Since 78-23-3(2) U.C.A. makes a homestead exempt from judicial lien and subsection (5) makes the proceeds exempt from levy, execution or other process for one year after the receipt by the homestead owner, the proceeds must be in Debra Compton's hands for the full one year period after her receipt.

If this is not the correct interpretation, then a result most contradictory to the statutes could occur. Assume the following hypothetical facts:

Debra Compton had filed her homestead declaration as she did and actually received the approximately \$800.00 in exempt proceeds immediately following the sale. Thereafter, approximately six months later, Plaintiff, having a judgment against Debra Compton, issues a writ of garnishment which is served upon the bank where such exempt proceeds are deposited. The bank, complying with the lawful writ of garnishment, either holds such proceeds as a result of Defendant's claim that they are exempt or pays them to Plaintiff over her objection as lawfully permitted under the writ. Suppose further, as in the case here, Debra sues to recover the exempt proceeds and points out to the judgment creditor that they came from the sale of her homestead property. Nonetheless, the judgment creditor still refuses to instruct the bank to return the funds or alternatively refuses to return the

funds itself, thereby depriving the person owning the exempt proceeds from their use or benefit or from reinvesting them in another homestead as permitted under 78-23-3(7) U.C.A.

In the hypothetical, it would surely be conceivable, and in fact very likely, that such litigation over the exempt proceeds could ensue for more than six months before a determination of the claims of the parties could be made at trial. If the lower court's statutory interpretation is correct, then the judgment creditor need only continue its refusal to return the funds to the homestead claimant until the one year period has elapsed, and thereupon the judgment creditor would have succeeded in making the funds subject to setoff and would have no further obligation to return the funds to the homestead claimant. The result would permit the judgment creditor to retain exempt proceeds for its benefit, which it had no right to obtain in the first instance, so long as it could successfully hold the money or tie up the money until the expiration of the one year period. This surely cannot be the correct conclusion or statutory interpretation, since it violates both the intention and spirit of the

constitutional homestead exemption and the express terms of the statutes implementing the same.

Debra Compton, having not received the proceeds at the time of sale of her homestead interest, and having not recieved them back at any time after she filed her counterclaim and continued with this action to recover such proceeds from Plaintiff; cannot now be deprived of having those proceeds for a period of one year from her receipt by making them subject to setoff in favor of Plaintiff.

POINT TWO: DEFENDANTS ARE ENTITLED TO RECOVER THEIR REASONABLE ATTORNEY'S FEES PURSUANT TO 78-23-13 U.C.A., AND THE COURT ERRED IN CONSTRUING THIS SECTION AS BEING APPLICABLE ONLY TO WRONGFUL EXECUTION.

Section 78-23-13 U.C.A. states the following:

An individual or the spouse or a dependent of the individual is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this chapter. A court may award costs and reasonable attorney's fees to a party entitled to injunctive relief or damages.

Chapter 23, "Utah Exemptions Act", doesn't just prohibit execution upon a real property interest consisting of an exempt homestead, but also prohibits levy or other process to obtain exempt sale proceeds. Section 78-23-3(2) exempts the homestead property from judicial lien, levy, execution or forced sale, and Section 78-23-3(5) provides that when a homestead is conveyed by

the owner that the proceeds of the sale, up to the amount of exemption that existed at the time of the sale, shall be exempt from levy, execution or other process for one year after the receipt by the homestead owner. Since "levy" is defined in Section 78-23-2(5) as "the seizure of property pursuant to any legal process issued for the purpose of collecting an unsecured debt" there appears to be no basis whatsoever for the trial court's unreasonably narrow and erroneous interpretation limiting an award of attorney's fees under the statute to circumstances where wrongful execution has occurred.

It is a well standing rule of statutory construction that remedial statutes are to be liberally construed. The homestead exemption statutes having been constitutionally mandated are certainly no exception to this rule and in fact, to the contrary, are the epitomy of this rule. See Utah Builders Supply Company v Gardner, 42 P.2d 989 (Utah 1935); Sanders v Cassity, 586 P.2d 423 (Utah 1978).

Our case is very similar to the hypothetical posed in Point I. above where the holder of homestead exempt proceeds on deposit with the bank has them taken by a writ of garnishment for a judgment debt. Such garnishment is improper since the proceeds are exempt and are not subject to levy or other process to collect upon a judicial lien. This is not to say that the judgment creditor did anything wrong or had any evil intent or

purpose at the time the writ of garnishment was issued and the proceeds were seized pursuant thereto. The judgment creditor may have been attempting in good faith to collect a proper judgment debt that was due and owing to it. However, if the judgment creditor, after being advised of the circumstances and facts and afforded the opportunity to reasonably verify the same, still refuses to return such proceeds, then surely the statute, being remedial in nature, was intended to redress this problem by permitting the Court to award attorney's fees.

The appropriateness or desirability for an award of attorney's fees in favor of the homestead claimant should be viewed relative to the amount of exemption set forth in the statute, namely \$8000.00 for the head of family, \$2000.00 for the spouse, and \$500.00 for each dependent child. These amounts which are the maximum exempted for the benefit of the family's interest in the homestead or homestead proceeds are small compared to the high cost of litigation in our society. The proceeds usually in controversy with a creditor would customarily be less than the maximum. If the Court interprets the statute narrowly and does not try to further its remedial purpose by awarding attorney's fees for the benefit of the homestead claimant, then surely the whole purpose will be emasculated. The claimant can rarely afford the cost of litigating and would be subject to the will, intimidation and overpowering of the

creditor who will usually have greater financial resources and better be able to withstand the cost of litigation to a final conclusion.

The legislature seemed to have recognized this problem and expressed its conscience by enacting in 1981 the remedial statute providing for an award of attorney's fees. It is also worth noting that it was in the same legislative session, 1981, that the legislature enacted Section 78-27-56 U.C.A. permitting the Court to award attorney's fees to the prevailing party when the Court determined that the action or "defense to the action" was without merit.

POINT THREE: DEFENDANTS ARE ENTITLED TO RECOVER THEIR REASONABLE ATTORNEY'S FEES PURSUANT TO SECTION 78-27-56 U.C.A.

Section 78-27-56 U.C.A. permits the Court in civil actions "where not otherwise provided by statute or agreement" to award reasonable attorney's fees to the prevailing party if the action or defense to the action was without merit and not brought or asserted in good faith. While Appellants contend that an award of attorney's fees is more properly supported under Section 78-23-13 U.C.A., nonetheless, an award would be appropriate under Section 78-27-56 U.C.A. as well.

The Utah Supreme Court in Cady v Johnson, 671 P.2d 149 (Utah 1983) held that two requirements had to be met before an award of attorney's fees under the statute would be

appropriate. The first was a finding that the action or defense being brought or maintained was "without merit." The term was equated to frivolous, and in Cady was further equated to no legal basis for recovery. In this case, particularly as to Edwin Compton, Plaintiff knew that there was no basis for taking his one-half of the sale proceeds from the home since he was not subject to Plaintiff's judgment at any time.

The second requirement is that the conduct in maintaining the defense be lacking in good faith. The Supreme Court equated this to establishing that Plaintiff either: (1) had no honest belief in the propriety of the activities in question; or (2) attempted to take unconscionable advantage of others; or (3) attempted to or had knowledge of the fact that the activities in question would hinder, delay or defraud others.

In this case, from the outset, Plaintiff knew and admitted (see Stipulation of Facts) that Edwin Compton was the owner of one-half of the proceeds and was not a judgment debtor and was entitled to have those proceeds paid to him upon the sale of the family home. Notwithstanding Plaintiff's counsel's acknowledgement of this fact, and further notwithstanding that Defendant's counsel proposed to hold the entire proceeds in escrow to protect Plaintiff or alternatively proposed to pay Plaintiff one-half of the proceeds that would have belonged to Debra Compton; nevertheless, Plaintiff insisted on receiving the

entire sale proceeds and accomplished this purpose over the objection of the Comptons and their counsel. Plaintiff's counsel, in discussions with Comptons' counsel and an officer of the title company, was made aware that the sale to the Joneses, who were innocent third parties and who had already moved into the family home, could not be completed under the cloud upon title to the home created by Plaintiff's Notice of Lien. Plaintiff's counsel further knew that there was substantially more secured debt owing on the home than the sales price and fair market value of the property and that the sale had been facilitated by the agreement of the secured lender to discount its payoff by more than \$8000.00. If the sale was delayed further by Plaintiff's refusal to remove the cloud on the title, then the lender would refuse to accept a discounted payoff and the foreclosure proceedings already pending by the secured lender would be completed, resulting in a total loss of any proceeds to Edwin Compton or his wife, Debra Compton.

The action and conduct of Plaintiff's counsel in this regard clearly demonstrates a lack of good faith and an attempt to take unconscionable advantage of the Comptons under the circumstances. The Honorable Judge Page, at the conclusion of the trial, saw fit to reprimand Plaintiff's counsel for the tactics used in obtaining the entirety of the sales proceeds. However, the Judge erroneously concluded that the Utah statutes

did not permit him to award attorney's fees. Justice would not be done by this Court if it does not reverse Judge Page's erroneous conclusion and, at the very least, award Edwin Compton attorney's fees pursuant to Section 78-27-56 U.C.A.

CONCLUSION

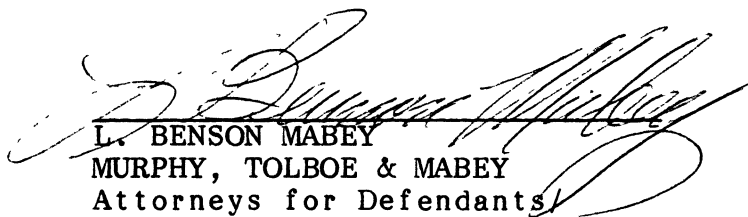
The trial court's decision to permit the judgment in favor of Debra Compton for recovery of exempt homestead sale proceeds to be setoff against Plaintiff's prior judgment and thereby to permit Plaintiff to retain the exempt proceeds must be reversed and remanded with instructions to enter judgment in favor of Debra Compton permitting her the recovery of her exempt homestead proceeds and allowing her the receipt of such proceeds for a period of one year before the same would be subject to levy or execution by Plaintiff or any other creditor.

The decision of the trial court interpreting Section 78-23-13 U.C.A. as available for a recovery of attorney's fees only under circumstances involving wrongful execution is erroneous and should be reversed and remanded with instructions to take evidence respecting attorney's fees necessarily incurred and occasioned by Plaintiff's wrongful refusal to return the exempt sale proceeds and enter judgment accordingly.

Finally, the trial court's failure to award the Compton's attorney's fees under Section 78-27-56 U.C.A. was based on an

erroneous conclusion that Plaintiff's defense was not without merit in view of the fact that Plaintiff's counsel acknowledged, even prior to taking the sale proceeds, that such proceeds were at all times owned by Edwin Compton who was not at any time a judgment debtor of Plaintiff.

DATED this 14th day of September, 1987.

A large, stylized handwritten signature in black ink, likely belonging to L. Benson Mabey, is written over the printed name and firm name.

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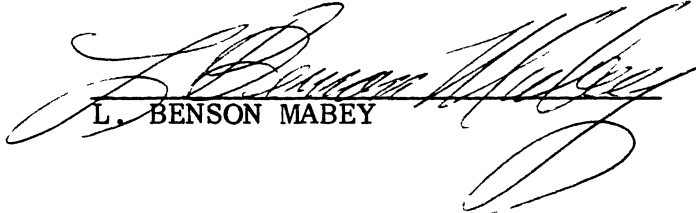
State Bar Number: A2035

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed four (4) copies of the Brief of Appellants to the following party by depositing the same in U.S. mails, postage prepaid, this 17th day of September, 1987:

Stephen L. Johnston
Attorney for Plaintiff
633 West 500 North
Salt Lake City, Utah 84116

and that I personally hand-delivered ten (10) copies of said Brief of Appellants to the United States Supreme Court on the 17th day of September, 1987:


L. BENSON MABEY

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

1987 MAR 23 PM 2:24

MICHAEL C. JONES, CLERK
2ND DISTRICT COURT

BY _____

L. BENSON MABEY
MURPHY, TOLBOE & MABEY
Attorney for Defendants
376 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 533-8505
State Bar Number: A2035

IN THE SECOND DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH

FREED LEASING, INC.,)	
)	STIPULATION OF FACTS
Plaintiff,)	
)	
-vs-)	
)	
DEBRA K. COMPTON and)	Civil No. 35898
EDWIN COMPTON,)	
)	
Defendants.)	
)	

William R. Russell, co-counsel of record for Plaintiff,
and L. Benson Mabey, counsel of record for Defendants and
Counterclaimants, make and enter into the following Stipulation
of Facts to present to the Court:

STIPULATED FACTS

1. On or about April, 1980, Debra and her husband,
Edwin Compton, purchased a single family home located at 1097
South 800 East, Bountiful, Utah, described more particularly as

FILMED

Lot 12, Holbrook Heights, Plat "A", Davis County, State of Utah (the "subject property"). Debra and Edwin Compton acquired title to this property as joint tenants.

2. On or about April 23, 1984, Plaintiff recovered judgment against Defendant Debra K. Compton in the sum of \$8905.38 in the Third District Court of Salt Lake County, State of Utah. Such judgment arose out of an automobile lease between Plaintiff and Defendant Debra K. Compton.

3. On or about June 29, 1984, Debra Compton conveyed her interest in the subject property to her husband, Edwin Compton, by quit claim deed. At this time of this conveyance by quit claim deed to Edwin, Debra, Edwin and their minor child, Jeremey, age 5, were living in the house on the subject property and continued to live in the house after the quit claim deed conveyance.

4. At the time Debra conveyed her interest in the subject property to Edwin, and thereafter to August 10, 1984, the subject property had a fair market value of \$122,000.00 and was subject to first and second trust deed obligations with an aggregate balance of not less than \$120,000.00 (copy of title report appended).

5. The purported quit claim deed conveyance by Debra to her husband Edwin was made without fair consideration within the meaning of Title 25 of the Utah Code, was made by Debra while she was insolvent or the conveyance rendered her

insolvent within the meaning of Title 25 of the Utah Code, and was made by her to avoid the attachment of Plaintiff's judgment lien to the subject property.

6. On or about July of 1984, Edwin entered into a written agreement to sell the subject property to R.T. Jones and Nanna E. Jones for the price of \$122,000.00. The sales agreement between Edwin and the Joneses was negotiated in an arms-length transaction. The sales price of \$122,000.00 was the highest and best sales price that had been offered for the property after the property had been actively exposed to the marketplace for a reasonable length of time.

7. Prior to August 1, 1984, Comptons moved all of their personal property, including household furnishings out of their house and permitted the Joneses to enter into possession.

8. On or about the 27th day of July, 1984, Plaintiff filed this action against both Debra and Edwin Compton alleging that a default judgment had been taken against Debra Compton on or about April 23, 1984 in Salt Lake County and seeking that Comptons be restrained from encumbering, transferring or conveying the subject property to allow Plaintiff to conduct execution proceedings thereon to satisfy its judgment.

9. On the 1st day of August, 1984, Edwin Compton and Joneses closed the sale of the subject property by signing and depositing all the necessary documents, including the Warranty

Deed conveying the property to Joneses with Associated Title Company.

10. On August 1, 1984, Gary Phillips, an employee of Associated Title Company, presented the warranty deed and other documents for recording to complete the conveyance of the subject property. At this time, Mr. Phillips first discovered that Plaintiff had caused a Notice of Lien to be recorded August 1, 1984 with the office of the Davis County Recorder specifically describing the subject property and claiming that Plaintiff had a lien against Debra Compton's interest in the subject property (copy appended).

11. Mr. Phillips immediately advised the Comptons and the Joneses that the Notice of Lien rendered the title unmarketable and uninsurable and that the transaction could not be completed because of the Notice of Lien and he could not record the Warranty Deed to the Joneses because the same had been delivered for the express purpose and subject to the condition that title would be marketable in the Joneses.

12. On the 3rd of August, 1984, L. Benson Mabey, attorney for Defendant Debra Compton, advised Plaintiff's attorney, Stephen L. Johnston, by letter (copy appended) and by phone conversation, that the total net sale proceeds that would be paid to Edwin Compton, as seller, from the sale of the subject property would be in the amount of \$1517.98 and that

Defendant Debra Compton was entitled to and claimed a Homestead Exemption in the subject property of \$10,500.00. Mr. Mabey provided Plaintiff's counsel, Mr. Johnston, with a copy of the proposed Homestead Declaration and seller's and purchaser's settlement statements (copies appended) to verify the net sale proceeds resulting from the sale.

13. On the 6th of August, 1984, Mr. Mabey, Mr. Johnston and Mr. Phillips of Associated Title Company had a conversation for the purpose of substantiating the seller's and purchaser's settlement statements to verify the net sale proceeds which would result from the sale. During this conversation, Mr. Phillips advised Mr. Johnston and Mr. Mabey that one of the holders of a secured encumbrance against the subject property had agreed to discount its payoff balance by approximately \$8000.00 to accomodate and facilitate the completion of the sales transaction whereby such holder would be paid off at the discounted balance set forth on the seller's settlement statement.

14. Mr. Mabey advised Mr. Johnston during this conversation, that if the closing was delayed further by reason of the Notice of Lien, the discounted payoff balance would no longer be accepted by the holder and the sale could not then be completed, causing damage and detriment to Edwin Compton and to the purchasers (Joneses) who had no notice or knowledge prior

to August 1, 1984 of any purported claim of Plaintiff to a lien on the subject property.

15. During this discussion, Mr. Mabey offered to enter into a stipulation to hold the net sales proceeds of \$1517.98 in escrow at Associated Title Company for the purpose of preserving and protecting Plaintiff's claim until the Court could make a determination as to the interest of the parties in such proceeds. Plaintiff's counsel refused to release the lien or to accept any escrow of the funds.

16. In subsequent telephone conversations between Plaintiff's counsel and Mr. Mabey, Plaintiff's counsel said that he understood that Edwin Compton was at all times since the purchase of the property, at least a one-half owner of the property and was not a party to the action or judgment previously taken by Plaintiff against the Defendant Debra Compton. Nevertheless, Plaintiff's counsel refused to accept a tender of one-half of the net proceeds and instead insisted on \$2500.00, approximately \$1000.00 more than the net sale proceeds, as a pre-condition to the release of the lien and clearance of the cloud upon the title of the subject property.

17. On August 9, 1984, Associated Title Company received a letter from Plaintiff stating that upon receipt of the entire net sales proceeds of \$1517.98, Plaintiff would give


Associated a release of lien and indemnify Associated respecting the lien (copy appended to this Stipulation).

18. On August 9, 1984, Defendant Debra K. Compton recorded the Declaration of Homestead Exemption (copy of which is appended) and instructed Associated to record the Warranty Deed to purchasers (Warranty deed recorded August 10, 1984, a copy of which is appended) and to release the sale proceeds to Plaintiff. The Declaration of Homestead was recorded prior to the Warranty Deed to purchasers and the \$1517.98 was paid by Associated Title Company to Plaintiff.

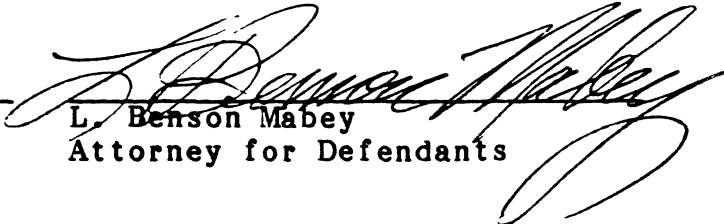
19. On or about August 29, 1984, Defendants filed their answer and counterclaim against Plaintiff.

20. The check paid from Associated Title Company for the total sale proceeds in the amount of \$1517.98 was paid to Plaintiff on August 11, 1984 and the interest on such amount, at the implied rate under Utah law (10%) per annum, from such date to March 26, 1987 (a total of 958 days) is in the amount of \$398.42.

DATED this 20th day of March, 1987.



William R. Russell
Attorney for Plaintiff



L. Benson Mabey
Attorney for Defendants

SCHEDULE A

COPY

1. Effective Date: July 11, 1984, at 8:00 A.M. Commitment No: D-84-6230

2. Policy or Policies to be issued: Amount
 - (a) ☐ ALTA Owner's Policy \$120,000.00-\$495.00
Proposed Insured: R. KEITH JONES and NONNA E. JONES
 - (b) ☒ ALTA Loan Policy \$ 40,300.00-\$120.00
Proposed Insured: GIBRALTER MONEY CENTER
 - (c) ☐ \$

3. The estate or interest in the land described or referred to in this commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:
EDWIN E. COMPTON, as his sole and separate property

4. The land referred to in this commitment is situated in the County of Davis, State of Utah, and is described as follows:

All of Lot 12, HOLBROOK HEIGHTS PLAT "A", according to the official plat thereof, on file and of record in the Davis County Recorder's Office.

Property Address: 1097 South 800 East, Bountiful, Utah 84010

Dimensions: 80' X 141.97' X 84.98' X 113.29'

COPY

**SCHEDULE B - Section 1
Requirements**

No. D-84-6230

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

Item (c) Trust Deed or Mortgage executed by R. KEITH JONES and NONNA E. JONES, to secure your loan.

COPY

SCHEDULE B — Section 2
Exceptions

No. D-84-6230

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.
8. All assessments and taxes for the year 1984, and thereafter. Taxes for the year 1983 have been paid in the amount of \$1,078.00. (Serial No. 04-094-0012)
9. Trust Deed in the amount of \$70,000.00, dated April 2, 1980, executed in favor of UTAH MORTGAGE LOAN CORPORATION, a Utah Corporation, as Beneficiary, by EDWIN E. COMPTON and DEBRA K. COMPTON, husband and wife, as Trustor, with INTERWEST TITLE COMPANY, as Trustee, recorded April 2, 1980, as Entry No. 561708, in Book 819, at Page 771, Davis County Recorder's Office.

Assigned to FEDERAL NATIONAL MORTGAGE ASSOCIATION, by Assignment of Trust Deed dated April 25, 1980, recorded May 6, 1980, as Entry No. 564196, in Book 823, at Page 733, Davis County Recorder's Office.

10. Substitution of Trustee, dated January 19, 1984, wherein DOUGLAS MATSUMORI, a member of the Utah State Bar Association, is the duly appointed and substituted Trustee, under the above Trust Deed, by document recorded January 26, 1984, as Entry No. 662917, in Book 976, at Page 589, Davis County Recorder's Office.
11. Notice of Default, wherein DOUGLAS MATSUMORI, Successor Trustee, provides notice that Trustor is in default under Trust Deed shown as Exception No. 9 herein, and the Successor Trustee has elected and does hereby elect to sell or cause to be sold the subject property, recorded January 26, 1984, as Entry No. 662918, in Book 976, at Page 590, Davis County Recorder's Office.

Continued.

Exceptions numbered none are hereby omitted.

12. Substitution of Trustee, dated May 9, 1984, wherein DOUGLAS MATSUMORI, a member of the Utah State Bar Association, is the duly appointed and substituted Trustee, under the above Trust Deed, by document recorded May 18, 1984, as Entry No. 672367, in Book 990, at Page 866, Davis County Recorder's Office.
13. Notice of Default, wherein DOUGLAS MATSUMORI, Successor Trustee, provides notice that Trustor is in default under Trust Deed shown as Exception No. 9 herein, and the Successor Trustee has elected and does hereby elect to sell or cause to be sold the subject property, recorded May 18, 1984, as Entry No. 672368, in Book 990, at Page 867, Davis County Recorder's Office, re-recorded June 5, 1984, as Entry No. 674002, in Book 993, at Page 5, Davis County Recorder's Office.
14. Trust Deed in the amount of \$23,000.00, dated September 14, 1982, executed in favor of NORTHWEST CREDIT UNION, as Beneficiary, by EDWIN E. COMPTON and DEBRA K. COMPTON, as Trustor, with UTAH TITLE AND ABSTRACT COMPANY, as Trustee, recorded September 16, 1982, as Entry No. 622958, in Book 914, at Page 936, Davis County Recorder's Office.
15. Trust Deed in the amount of \$42,494.92, dated September 12, 1983, executed in favor of FIDELITY FINANCIAL SERVICES, as Beneficiary, by EDWIN E. COMPTON and DEBRA K. COMPTON, his wife, as Trustor, with RECORD TITLE AGENCY OF UTAH INC., as Trustee, recorded September 16, 1983, as Entry No. 651946, in Book 959, at Page 903, Davis County Recorder's Office.
16. A seven (7) foot easement for public utilities running along the Northeasterly and Southwesterly sides of the subject property as shown on the recorded plat of said subdivision.
17. Said property is located within the boundaries of the Weber Basin Water Conservancy District, Bountiful Water Subconservancy District, South Davis Sewer Improvement District, and Bountiful City (298-6194), and is subject to the charges and assessments levied thereunder.

Note: The following name(s) have been checked for judgments:

1. JONES, R. Keith
2. JONES, Nonna E.
3. COMPTON, Edwin E.
4. COMPTON, Debra K.

No unsatisfied judgments have been filed during the past eight years.

Stephen L. Johnston
Lawyer
633 West 500 North
P.O. Box 16141
Salt Lake City, Utah 84116
801-364-7320

COPY

679052

IN THE DISTRICT COURT FOR DAVIS COUNTY
STATE OF UTAH

FREED LEASING, INC., 328-4931

Plaintiff,

vs.

DEBRA K. COMPTON,

Defendant.

NOTICE OF LIEN OF FREED
LEASING INC. AGAINST ALL
INTERESTS IN REAL PROPERTY
LOCATED IN DAVIS COUNTY OF
DEBRA K. COMPTON

CASE NO. G-84-605 -
License No. 1730

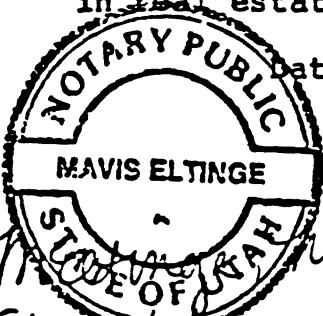
On Margin
Indexed
Compared
Entered

Please take notice that Freed Leasing Inc. has a lien against all interests in real property of Debra K. Compton by virtue of that judgment rendered in the District Court for Salt Lake County and docketed with the clerk of Davis County. The judgment was rendered in Salt Lake County on 23 April 1984 and docketed in Davis County on 18 July 1984. The judgment was entered in the sum of Eighty-Nine Hundred and Five Dollars and Thirty-Eight Cents (\$8,905.38). This lien should be entered against Debra K. Compton's interest in the following described real property:

04-094-0012
Lot 12, Holbrook Heights, Plat A

The lien should be entered against any other interests in real estate owned by Debra K. Compton in Davis County.

Dated this 27th day of July 1984.



Notary Public

Stephen L. Johnston
Stephen L. Johnston (ms)
Stephen L. Johnston
Attorney for Plaintiff

YANO, MURPHY, WEGGELAND AND FRIEDLAND, P.C.
ATTORNEYS AT LAW
376 EAST 4TH SOUTH STREET, SUITE 300
SALT LAKE CITY, UTAH 84111
PHONE (801) 533-8505

L BENSON MABEY

August 3, 1984

Stephen L. Johnston
Attorney at Law
633 West 500 North
P.O. Box 16141
Salt Lake City, Utah 84116

RE: Freed Leasing Inc. vs Debra Compton and Edwin
Compton -- Case No. C-84-605

Dear Mr. Johnston:

I tried to get a hold of you on Thursday and Friday without success. I am representing Debra Compton in connection with the complaint that you have filed in Davis County seeking to set aside a purported Quit Claim conveyance by Debra Compton to Edwin Compton, her husband, of the home at 1097 South 800 East in Bountiful, Utah.

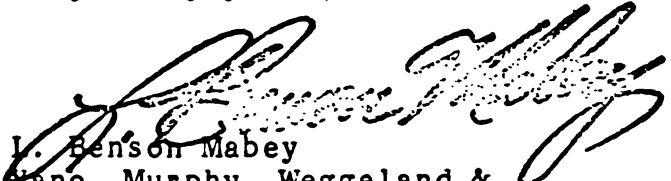
In this regard, I have enclosed a copy of the closing statement that was signed a few days ago for the sale of the subject home (both buyer and seller statements are enclosed). I have also enclosed a copy of a Declaration of Homestead that Ms. Compton will sign and file to claim an exemption for the subject property.

If you will review the seller's settlement statement, you will readily see that the total sale proceeds are in the amount of \$1517.98 and that Ms. Compton would be entitled, under Section 78-23-3, Utah Code, et seq., to claim \$10,500.00 on Homestead Exemption for this property. I understand the reason for your action to set aside the Quit Claim Deed as a fraudulent conveyance, but as you can see, even if it were set aside, there would still be no proceeds available for your client from the sale of the home. If you will review Section 78-23-3, particularly (5) and Section 78-23-4, then I believe that you will agree that your notice of lien recorded August 1, 1984 should be voluntarily removed from the County Recorder's records to permit the completion of the sale transaction.

Stephen L. Johnston
August 3, 1984
Page 2

Please give this your immediate consideration and telephone me as soon as possible so that we can discuss this matter. Thanks for your anticipated cooperation.

Very truly yours,



I. Benson Mabey
Pano, Murphy, Weggeland &
Friedland

LBM/js
Encl.
cc Debra Compton



COPY

ASSOCIATED TITLE COMPANY

BUYERS SETTLEMENT STATEMENT

EDWIN E. COMPTON

R. KEITH JONES

SELLERS

NONNA E. JONES

BUYERS

Property 1097 South 800 East
Bountiful, Utah 84010Escrow Number D-84-6230

DEBITS:

Sales Price..... \$ 122,000.00

Unexpired Fire Insurance with.....

Reserves FIRST SECURITY REALTY SERVICES\$ 616.99Recording Fees WARRANTY DEED\$ 5.00Escrow Fee ASSOCIATED TITLE COMPANY\$ 60.00Loan Transfer Fee FIRST SECURITY REALTY SERVICES\$ 693.45

Other Debits:

RESERVE DEFICIT TO FIRST SECURITY REALTY SERVICES \$ 108.98STATE FARM INSURANCE HOMEOWNERS \$ 258.00TOTAL DEBITS..... \$ 123,742.42

LESS CREDITS:

Tax Pro-ration to 8-1-84 Based on 1983 taxes in the
amount of \$ 1,078.00 Tax Serial # 04-094-0012\$ 623.03Earnest Money Deposit With CHRISTIANSEN REALTORS\$ 1,000.00TRUST DEED balance as of 8-1-84 withUTAH MORTGAGE & LOAN\$ 69,022.78

Interest due and assumed by buyer.....

\$

Other Credits:

\$

\$

\$

\$

\$

TOTAL CREDITS..... \$ 70,645.81NET AMOUNT REQUIRED FROM BUYER TO CLOSE..... \$ 53,096.61

The undersigned hereby accept the above information as true and correct and do hereby hold Associated Title Company harmless and free of any liability resulting from different information or amounts described herein which is later deemed incorrect and further authorizes and directs Associated Title Company to disburse the sales proceeds in accordance herewith.

Dated.....

Closing Officer.....

R. Keith Jones

Buyer Nonna E. Jones



COPY

ASSOCIATED TITLE COMPANY

SELLERS SETTLEMENT STATEMENT

EDWIN E. COMPTON

R. KEITH JONES

SELLERS

NONNA E. JONES
BUYERSProperty 1097 South 800 East
Bountiful, UT 84010Escrow Number D-84-6230

CREDITS:

Sales Price..... \$ 122,000.00

Unexpired Fire Insurance with _____

\$ _____

Reserves FIRST SECURITY REALTY SERVICES\$ 616.99

Other Credits: _____

\$ _____

\$ _____

\$ _____

TOTAL CREDITS..... \$ 122,616.99

LESS DEBITS:

Tax Pro-ration to 8-1-84 based on 1983 taxes in the
amount of \$ 1,078.00 Tax Serial # 04-094--0012 \$ 623.03TRUST DEED balance as of 8-1-84
with UTAH MORTGAGE LOAN \$ 69,022.78Title Insurance ASSOCIATED TITLE COMPANY \$ 501.00Recording Fees RECON, RECON, POWER OF ATTORNEY \$ 54.00Commission Due CHRISTIANSEN/PETER WIMBROW \$ 3,660.00

Earnest Money deposit with _____ \$ _____

Escrow Fee ASSOCIATED TITLE COMPANY \$ 60.00

Interest due and assumed by buyer from _____ to _____ \$ _____

Other Deductions: _____

Late Charges \$ 1,002.79Delinquent Payments July 83 August 84 \$ 12,824.00Attorney Fees \$ 351.41Payoff Fidelity Financial \$ 33,000.00

\$ _____

TOTAL DEDUCTIONS..... \$ 121,099.01TOTAL SALES PROCEEDS DUE SELLER..... \$ 1,517.98

The undersigned hereby accept the above information as true and correct and do hereby hold Associated Title Company harmless and free of any liability resulting from different information or amounts described herein which is later deemed incorrect. All instruments may be delivered or recorded and funds disbursed in accordance herewith.

Dated _____

Edwin E. Compton by Delora H. Compton
Edwin E. Compton
Attorney in fact
Sellers

Closing Officer _____

Sellers New Address _____

EXHIBIT "A"

August 9, 1984

To: Associated Title Company
811 South 500 West
Bountiful, Utah 84010
Re: ATC D-84-6230

From: Freed Leasing, Inc.
47 South 200 East
Salt Lake City, Utah 84111

Re: Notice of Lien of Freed Leasing Inc. against all interests in real property located in Davis County of Debra K. Compton.

To Whom It May Concern:

The undersigned hereby agrees that upon receipt of \$1,517.98, representing sellers equity in the property located at 1097 South 800 East, Bountiful, Utah, that they will indemnify and hold harmless from any loss and/or expense Associated Title Company, their underwriter and escrow officers, pertinent to a Notice of Lien dated July 27, 1984, and recorded August 1, 1984, as Entry No. 679052, in Book 1000, at Page 617, Davis County Recorder's Office, and further agrees to furnish a complete Release of Lien showing full satisfaction of said lien pertinent to the subject property.

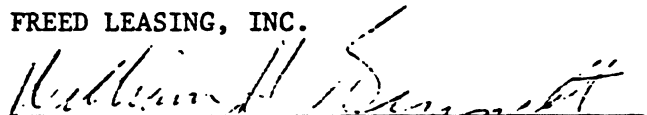
Property is also known as:

All of Lot 12, HOLBROOK HEIGHTS, PLAT "A", according to the official plat thereof on file and of record in the Davis County Recorder's Office.

Dated this 9th day of August, 1984.

Attest:

FREED LEASING, INC.



Its: Pres

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 9th day of August, 1984, personally appeared before me _____ and _____, who being by me duly sworn did say, each for himself, that he, the said _____ is the _____, and he, the said _____, is the _____ of Freed Leasing, Inc. and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said _____ and _____ each duly acknowledged to me that said corporation executed the same.


Notary Public